

TESTIMONY OF PROFESSOR STEVEN KELMAN, HARVARD UNIVERSITY,
BEFORE HEARINGS OF THE HOUSE COMMITTEE ON GOVERNMENT REFORM
ON GSA REORGANIZATION, MARCH 16, 2005

Chairman Davis, Congressman Waxman, and members of the Committee, I appreciate the opportunity to appear before you, and I strongly applaud the Committee for holding this hearing. This hearing will garner no headlines. But it is about improving the day-to-day performance of government. And that's important even if it doesn't get a headline.

I support the GSA reorganization effort. GSA's procurement operations perform valuable services for the federal government. But these operations have come under scrutiny over the past few years for various kinds of problems and abuses, real or alleged. These problems need attention. Just as importantly, perhaps even more importantly – though this not surprisingly hasn't received the same media attention as juicy stories of abuses – GSA has not fully made use of its ability to add value on behalf of federal agencies and the taxpayer.

Both the governmentwide contracting functions traditionally undertaken by the Federal Supply Service and the contracting assistance functions often undertaken by the Federal Technology Service are sensible roles for a central organization such as GSA to undertake. First, having contract vehicles such as the GSA schedules negotiated, with a basic set of terms and conditions, contractor representations, and basic prices is an efficient use of government resources, avoiding the need to negotiate separate contractual vehicles again and again, especially in an environment where the government may,

through BPA's, negotiate improvements on those basic prices and terms. Second, GSA has the potential – though this has by no means been fully realized – to leverage the government's buying power and obtain price discounts, and better terms and conditions, reflecting the government's status as a large-scale customers. Third, the customer assistance role that some parts of FTS have played – helping government customers with developing performance-based statements of work and with contractor selection, in areas of recurring governmentwide requirements (such as help desks, call centers, etc.) takes advantage of knowledge GSA has gained by repeated exposure to similar kinds of requirements, which an individual operation within the government doesn't have, because it has little experience contracting for the services in question.

Finally, both GSA schedules and GWAC's provide an environment that streamlines source selection, allowing for simplified competitions among pre-screened contractors. Speeding up the procurement process is not simply a matter, as some are now suggesting, of government program managers afflicted with ADD. Fast service allows better program execution. It sends a good signal about the urgency of program performance, and of respect for civil servants and how we treat them. By allowing the government to choose a new contractor easily if the previous one has failed, it adds to incentives for contractor performance.

There is a potential cost to such centralization, however. The central organization can lose contact with the needs of the agencies whom it is supposed to serve, losing the drive to negotiate good deals and becoming unresponsive or becoming unresponsive in other ways. This is particularly the case if the central agency is a monopoly or required

supplier to agencies. We very much saw this problem in the GSA of the period prior to the procurement reforms of the 1990's.

The solution to this potential problem that has been developed is generally to eliminate GSA's mandatory source status and to make GSA's procurement function dependent on revenues from customers who choose to use GSA procurement services. This solution has been recently criticized, in the context of some of the abuses in GSA procurement activities, as creating "perverse incentives" to increase GSA revenue at all costs.

I disagree with this diagnosis, and I would oppose any proposal to eliminate customer payments as the main source of funding for GSA procurement functions. If we are willing to entrust testosterone-driven 23 year-old Wall Street bond traders with the profit motive, surely we can find a way to take advantage of the positive effect of these incentives for 52 year-old GSA bureaucrats from Arlington. We trust bond traders with the profit motive because we understand its value in incentivizing energetic performance, and we have established a system of legal and ethical constraints that limit what bond traders appropriately may do in the pursuit of profit. If we are concerned about inappropriate behavior by GSA in pursuit of sales, we should establish legal and ethical constraints to limit what GSA appropriately may do to get sales. We shouldn't deprive ourselves of the positive effects of these incentives. Doing so could create the kind of slothful and unresponsive GSA we had before these changes during the 1990's, and it would be bad for the government.

For me, probably the most important argument for a reorganization of GSA's procurement activities is that a reorganization is a shock to the system that provides an occasion for reconsidering old policies and behaviors, and for introducing improvements.

Right now, it would appear that GSA's attention, unfortunately, is pretty much exclusively devoted to dealing with the abuses that have gotten so much press attention this past year. Of course, GSA needs to address these abuses, as the "Get It Right" campaign is trying to do. But its work can't stop there – and any reorganization will be a failure if the changes it induces stop there. Dealing with the abuses will, we hope, reduce the number of bad things that happen. But we want to set our sights much higher than just not doing bad things. As I have said once earlier in testimony before this Committee, we would not judge as a success the career of a member of Congress who had never violated an ethics rule or done anything wrong – but also never sponsored or promoted any legislation, or worked on any oversight.

I would like to address the issue of dealing with the various abuses that have been in the headlines over the past year, but that reflect problems that we have known about for far longer than that. Any system has both goals it seeks and ethical constraints under which it operates. We probably have not done as good a job as we should creating a culture that emphasizes the importance of respecting those ethical constraints. Given that GSA has been trying many new things, this isn't surprising. But it should be rectified.

In my view, perhaps the most important reason we need to have a sense of urgency about enforcing competition requirements for GSA services schedules has to do with the integrity of the system. The limited evidence we have available suggests that in many cases, one-bid schedule orders involve re-competitions of existing work where the

incumbent is performing well. As a general matter, I suspect, the government is not suffering actual damage from the lack of competition. However, these one-bid orders, where there is minimal documentation of the reasons for award and little peer review of program official decisions, create an excessive risk of abuse by unscrupulous program managers engaging in the dark side of the revolving door or, even worse, for outright corruption. I am very concerned that the current system has already produced some examples of such problems that we have not yet discovered. In the future, we need the internal scrutiny and peer review competition provides to reduce those risks.

However, I believe that the most serious criticism that can be made of GSA over the past decade – and one that I hope the Committee will continue to address in the context of any reorganization – is that they have failed to use their central position in the procurement system, and the significant resources they have obtained from government customers, to undertake sufficient efforts to add value to the procurement process on behalf of their customers.

(1) GSA should be educating and working with agencies to encourage agency development of BPA's for supply categories in addition to IT hardware and office supplies: The great successes of BPA's for IT hardware and, to a lesser extent, for office supplies have not been duplicated enough in other supply categories where there are significant agency purchases, such as lab equipment, furniture, or hardware. GSA should actively work with federal customers to provide help in developing such BPA's.

(2) GSA should be more active in negotiating automatic discounts for the government purchase card: The greatest problem with the government purchase card is not the isolated examples of fraudulent use of the card, but rather the number of card

transactions where government customers pay full retail prices for what they buy. Using purchase card data, it is possible to figure out the dollar volume of government purchases with a given supplier. At a very minimum, purchase card buyers should receive basic GSA prices for vendors who have these items on schedule. Beyond that, GSA should be active in negotiating automatic discounts based on past sales volumes aggregated for the government as a whole, that go above basic GSA prices. These discounts should occur automatically any time a government buyer uses the card to make a purchase using a supplier with whom such discounts have been negotiated.

(3) GSA should expand its efforts to provide assistance to government customers for improved contracting methods: GSA's reservoir of knowledge about how to contract for recurring kinds of requirements should be considered one of its core competencies. Government organizations often buy a certain kind of requirement, be it product or service, occasionally. GSA is in a position to see it bought frequently. I strongly applaud GSA's decision to establish a share-in-savings office that is taking a governmentwide lead trying to promote this innovative incentive technique for government contracting. GSA, in my view unfortunately, seems to be moving away from some of its dedicated specialty contracts, such as for disaster recovery services. These are good vehicles that play to GSA's comparative advantages. Frequently in the past as well, FTS has provided assistance to government customers on developing performance-based contracts. These efforts must not disappear in the context of any reorganization; indeed, they should be expanded.

(4) GSA needs to be continually looking for new ways to help its customers. GSA's work in providing technical assistance on share in savings is an excellent example

of an effort to develop new ways GSA can help its customers. Just to take one example, GSA should publish for agencies a list indicating when the fiscal quarter for each publicly traded GSA schedule vendor ends. It is well-known that companies are often more likely to provide better pricing at the end of their fiscal quarters, because salespeople have quotas to meet. Providing a convenient list with such information would help contracting officers get better deals for the government. GSA should do this within the next month. More generally, GSA should see it as its business to be continually alert for opportunities such as these to serve their customers better. GSA should meet regularly with senior procurement executives and with the Federal Acquisition Council to seek ideas for ways it can better serve its customers.

The changes I've been discussing today can't be commanded by legislation. Instead, they require the continued engagement of this Committee well beyond this hearing and well beyond any legislation. They require this Committee to focus not only on having GSA avoiding doing the wrong thing, but on helping GSA do the right thing. With your engagement, I am confident that GSA can improve its value to our government and people.